REMARKS/ARGUMENTS

Claims 1-37 are currently pending in the present application. Claims 1, 11, 23, 24 and 27 have been rejected under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite. Claims 1-4, 6, 7, 11-14, 16-19, 33 and 34 have been rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over U.S. Patent No. 5,634,006 to Baugher et al. and U.S. Patent No. 6,999,449 to Barna et al. Claims 5, 8-10, 15, 20-24, 26-32 and 35-37 have been rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Baugher and Barna in view of U.S. Application Publ. No. 2002/0152319 to Amin et al. Applicant respectfully traverses the rejections.

In this response, Applicant has amended the claims to cover subject matter directed to degrading or denying network access only as to predefined subsets of traffic types. In other words, when a utilization milestone is achieved, network access is affected (degraded or denied) only as to a subset of network traffic types. Specifically, Applicant has amended to claim 1 to include allowing but degrading, only with respect to a predefined subset of traffic types, the network access provided to the first user identified in the detecting step." Claim 9 has been amended to independent form, and to include "denying further network access to the first user identified in the detecting step only with respect to a predefined subset of traffic types." Claims 11, 23 and 24 have been amended to include similar limitations to those set forth above. Claims 1, 11, 23, 24 has also been amended to address the rejection under 35 U.S.C. § 112. Claims 2-3, 8, 12, 14, 20, 21, 27-32, and 37 have been canceled.

To establish a *prima facie* case of obviousness, three basic requirements must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to

modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991), as quoted in MPEP 2143.

The foregoing amendments generally correspond to the limitations of claims 8 and 9 as presented in Applicant's previous response. As to such claims, the Examiner has admitted that both Baugher and Barna fail to disclose the claimed subject matter, and relies on the teachings of Amin. This reliance on Amin is misplaced, as Amin does not teach allowing or degrading network access only with respect to a subset of traffic types, when a utilization milestone is achieved. Rather, the passages of Amin cited by the Examiner (Amin ¶¶ 152-154) merely disclose various QoS levels that a user may request. That Amin may teach different types of network traffic misses the mark, since Amin, when viewed alone or in combination with Baugher and/or Barna, does not disclose or suggest a system that degrades or denies network access only as to a predefined subset of network traffic types.

Moreover, the teachings of Amin, Barna, and Baugher, when viewed as a whole, fail to disclose or suggest the claimed subject matter. Baugher discloses methods and systems that reserve bandwidth for individual data flows initiated by hosts on a token ring network. Specifically, the system of Baugher operates to reserve or allocate bandwidth to individual data flows based on requested QoS parameters, current loading conditions, and existing allocations in the network. Baugher does not disclose a system that affects a characteristic associated with network access after the aggregate

volume of data transfer within a given time interval, that spans at least one week, corresponding to a given user crosses a threshold. Stated in other terms, Baugher (operates on a flow-by-flow basis and allocates bandwidth based on availability). On the other hand, the claimed subject matter is directed to affecting network access based on aggregate volume of data transfer over a given time interval. For example, as Baugher teaches (see Col. 8, starting at line 25), when a requesting station attempts to reserve bandwidth for a flow, an allocation decision is made based on the current loading conditions of the network (in other words, how much bandwidth (throughput capacity) is currently being used, and how much bandwidth has been allocated to the requesting station. This reservation may fail because the requesting station may have reserved a total amount of bandwidth that exceeds an allocation, or the total bandwidth consumed by all stations may prevent a requested allocation from being fulfilled. Again, however, bandwidth refers to a current rate (usually expressed as bits per second) that can be allocated among stations. However, this has no relation to the volume of data transfer referred to in the claims, which bases its affect on network access based on the aggregate volume of data that has been transferred over a given time interval, not the current bandwidth consumed by a given station or stations, as taught by Baugher. In other words, Baugher allocates bandwidth to a given data flow based on current loading and allocation conditions. The claimed invention, however, can be used to affect network access after a threshold volume of data has been transferred over a given time interval, regardless of the bandwidth currently consumed.

Amin discloses the deployment of accounting and QoS mechanisms across a computer network. That it discusses different traffic types has little bearing on the claimed subject matter, which, after a threshold is reached, treats some traffic types

differently than others. Neither Baugher nor Amin disclose methods or systems that monitor aggregate data transfer for individual users over a time interval that spans at least one week, and affect a characteristic of the network access, only as to a defined subset of network traffic types, provided to a first user after the aggregate data transfer within a given time interval corresponding to the first user crosses a threshold value. Rather, as discussed herein, Baugher bases allocation decisions based on current loading and allocation conditions. Furthermore, while Barna discloses a volume-based network access control, it does not disclose a system that degrades or denies network access only as to a subset of network traffic types. Rather, in Barna, network access is either allowed as to all traffic types associated with a user/subscriber or denied as to all traffic types.

In light of the foregoing, Applicant believes that all currently pending claims are presently in condition for allowance. Applicant respectfully requests a timely Notice of Allowance be issued in this case. If the Examiner believes that any further action by Applicant is necessary to place this application in condition for allowance, Applicants request a telephone conference with the undersigned at the telephone number set forth below.

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Respectfully Submitted,
LAW OFFICE OF MARK J. SPOLYAR
By
/Mark J. Spolyar/
Mark J. Spolyar
Reg. No. 42,164

Customer Number: 30505
Law Office of Mark J. Spolyar
2200 Cesar Chavez Street, Suite 8
San Francisco, CA 94124
415-826-7966
415-480-1780 fax